Supreme Court, U.S.
FILED

(1) 94 759 SEP 27 1994

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No.

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1994

RICHARD E. JOB,
Petitioner,

vs.

WELLS FARGO NATIONAL BANK, N.A.,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

RICHARD E. JOB
Petitioner *in Propria Persona*
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QUESTION PRESENTED FOR REVIEW

1. The Respondent, Wells Fargo Bank, in connection with providing line of credit financing for a business deal, required a personal, continuing guaranty from the Petitioner, Richard E. Job. The plain language and common sense reading of waiver clauses in the guaranty gave no indication of the intent of the Respondent to give a broad scope and application to waiver language in the continuing guaranty, which broad scope and application has, unfortunately been "rubber-stamped" by the California Courts and which effectively deprived the Petitioner of any right to present a meaningful defense when the Respondent sought to enforce the guaranty. This deprivation of Petitioner's right to offer a meaningful defense, in which California Courts became a participant,

violated Petitioner's Fourteenth Amendment right to due process.

PARTIES

The caption of the case in this Court contains the names of all parties to the proceedings in the California Supreme Court.

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IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1994

Richard E. Job, Petitioner

v

Wells Fargo Bank, N.A., Respondent

PETITION FOR A WRIT OF CERTIORARI
TO THE CALIFORNIA SUPREME COURT

OPINIONS BELOW

The June 29, 1994, unpublished Denial of Petition for Review by the California Supreme Court, sought to be reviewed herein, is reprinted in Appendix A to this Petition. The prior opinion of the California Court of Appeal, Fifth Appellate District, from which this review was sought is unpublished, is reprinted in Appendix B to this Petition.

STATEMENT OF JURISDICTION

The Denial of Petition for Review by the California Supreme Court was filed on June 29, 1994. The jurisdiction of this Court is invoked pursuant to 28 USC § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

This case involves Section 1 of the Fourteenth Amendment of the Constitution of the Untied States, which Section reads as follows,

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or

property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

Petitioner herein, Richard E. Job ("Job"), was convinced by his then son-in-law, Jay Williams ("Williams"), to enter into a cattle "stocker" operation, wherein cattle would be purchased for fattening, then sold, hopefully at a profit. Financing for this business venture came from Respondent, Wells Fargo Bank ("Respondent"), particularly a branch with expertise in financing agricultural ventures, and that financing took the form of a line of credit loan from the Respondent to the corporation, J/W Cattle Inc., which was jointly owned by Job and Williams. Job is a cement

contractor, with no experience in such a venture, who relied on the expertise of Williams and the Respondent to make the venture a success.

As part of the financing package, Respondent represented to Job, *inter alia*, that: there would be an enforced dual authorization procedure for advances on the line of credit; Respondent would inventory the cattle; and there would be margin requirements on the loan, which would be enforced. Respondent required that Job and Williams execute personal, continuing guaranties of the line of credit loan. To put it bluntly, Williams turned out to be a crook; he took advances on the line of credit, quickly (within the space of a month or so) drawing the maximum available on the line of credit, for many of which advances he

bought no cattle, rather spending on other things for himself. Not surprisingly, at the end, there were insufficient cattle to satisfy the indebtedness to the Respondent; almost immediately, the Respondent turned to Job for repayment, based upon the continuing guaranty.

Job wanted to raise as part of his defenses, the fact that Respondent had failed to inventory the cattle and enforce the margin requirements and, most of all, enforce the dual authorization requirement, all of which had been represented to Job, before he signed the continuing guaranty. Respondent countered with, among other things, that Job had waived such defenses by language in the continuing guaranty to the effect that Job waived notice of any changes in

the "terms of indebtedness" for the line of credit.

At trial, Respondent relied upon this "waiver" defense, among others, and the trial court agreed, also finding that there had been no dual authorization requirement in the loan to begin with and judgment was entered against Job. Job brought a timely appeal of the judgment, raising, among other issue, that the trial court's broad reading of the waiver clauses in the continuing guaranty, and especially the meaning of the words "Terms of indebtedness" amounted a deprivation of Job's Constitutional right of due process, as set forth in the Fourteenth Amendment to the United States Constitution.

Specifically, Job likened the sweeping effect which the Respondent and

the trial court gave to the waiver clauses, to the impermissible effects of *cognovit* clauses, which have been found repugnant to due process, so much so that Job likened them to *de facto cognovit* clauses. Job argued, as he will herein, that neither the plain wording of the waiver clause, nor any common sense reading of them, could put anyone on notice that Job was, by signing the continuing guaranty, simultaneously, effectively relieving the Respondent of any obligation to live up the duties and responsibilities it was undertaking at the very same time Job was signing the continuing guaranty.

To put it another way, the interpretation the Respondent and the California Courts gave to the waiver clauses effectively deprived Job of,

practically speaking, any meaningful defense to the Respondent's attempts to collect on the continuing guaranty. It was in this way that the waiver clauses became akin to *cognovit* clause; by the waiver clauses, and through the California Court's reading of them, Job was effectively agreeing to confess to a judgment for whatever became owing on the line of credit loan, no matter how or why it was owing. This effective confession to judgment, moreover, became a waiver of due process rights that could not possibly have been knowing or voluntary, given the tortured reading upon which enforcement of the clauses had to be based.

The California Court of Appeal, Fifth Appellate District, evidenced very little consideration of this argument,

rejecting it at Section II.B.3 of their opinion. See, Appendix B at pp. 37-38. The court of appeal found no authority for the concept of a *de facto cognovit* clause and noted that no facts had been adduced to indicate that the continuing guaranty was even a contract of adhesion. With all due respect, the court of appeal had simply missed the point; the analogy to a *cognovit* clause centered not an identity of characteristics, but the fact that the waiver clauses at issue here, in their broad effects under the court of appeal's reading of the law, reflected the same inherent and effective characteristics which have made certain *cognovit* clauses repugnant to the due process rights of the Fourteenth Amendment.

REASONS FOR GRANTING THE WRIT

The case here is not really that complicated; it involves the type of business transaction between financial institutions and their customers that takes place countless times throughout the county, but therein also lies the danger in the decision of the court of appeal (and the trial court). The crucial issue is whether the financial institution can procure from a third party a personal guaranty for the full amount of a line of credit loan, telling that party how the financial institution will handle the loan and advances thereunder, then proceed to totally ignore those very procedures and still force the third party to bear the loss attributable in large part to financial institution's failure to live up to <u>its</u>

commitments, all because of a tortured reading of waiver clauses Respondent itself drafted in a form contract. Respondent has, throughout, basically argued that a financial institution can get away with this, based upon the waiver clauses in its continuing guaranty, conveniently interpreted and upheld by the a California court of appeal in Stevenson v. Oceanic Bank (1990) 223 Cal.App.3d 306, 272 Cal.Rptr. 757.

The Respondent convinced the trial court and then the court of appeal of its position and that Job is thereby essentially precluded from presenting a defense that it was Respondent's action and inaction which caused the loss. The court of appeal especially placed great reliance on the Stevenson decision to exculpate the Respondent (see, Appendix B

at pp. 69-71); perhaps it felt bound to do so. As will be explained herein, the Stevenson decision is simply bad law in that it, *inter alia*, articulated principles totally irrelevant to the holding, but, more importantly, allowed the drafter of a form document to get away with an outrageous broadening of terms in the document, such as "terms of indebtedness."

Job and his son-in-law came to Respondent to procure a commercial loan to finance a corporate cattle operation and, moreover, went to a branch Respondent, of one of California's largest financial institutions, located in a more rural section of California and, thus, with a professed amount of experience in handling loans related to cattle operations. Respondent reviewed

the plan of operation, etc. and approved the line of credit loan, after evaluating that the proposed cattle operation was a viable economic one.

As part of the financial "package" surrounding the line of credit loan, Job was required to sign a continuing, personal guaranty. Prior to Job's becoming a guarantor, he was told about a variety of specific (safeguard) procedures that Respondent was implementing in connection with administration of the line of credit. All these procedures (dual authorization before advances, inventorying the cattle, margin requirements governing advances on the line of credit, etc.) were obviously designed to ensure that the business plan, with its estimated returns and loan payback, which Respondent had pronounced

viable, would be followed in the use of the loan proceeds, and many procedures were specifically incorporated into the credit agreement for the line of credit loan (the "Credit Agreement"). The loan personnel at Respondent's Fresno branch understood this and, what is more, they knew that Job understood the procedures and relied on Respondent to follow them.

In its one concession to Job, the court of appeal agreed that there was a dual authorization requirement for advances on the line of credit (i.e. both Job and his son-in-law had to authorize advances), contrary to Respondent's argument and the trial court's opinion on the matter. See, Appendix B § II.B.1, pp. 27-28. Respondent proceeded, almost immediately after the loan agreement and guaranty were signed, to totally

disregard the procedures; it made advances without dual authorization, it did not inventory the cattle and it ignored the margin requirements on the loan, among other things. In consequence, advances on the line of credit were made which were not authorized by Job and did not even result in purchases of cattle (many of the drafts were not even signed by either Job or his son-in-law, but by totally unrelated third parties). The Respondent, the only one in a position to see that this was occurring, as between itself and Job, simply sat by and let it happen, never once informing Job that it was paying out advances on the line of credit, without following the procedure it, itself, had told Job would be used.

The line of credit was quickly

"maxed out" by the advances, but there were, consequently, insufficient cattle collateral to even satisfy the indebtedness, let alone turn a profit, and Respondent simply turned to Job for a check to cover the shortfall. Job, as would anyone, balked at simply bearing the loss, when it seemed obvious to him that, as between him and Respondent, it was the Respondent whose actions, or inactions, precipitated the problem.

Moreover, these provisions of the Credit Agreement were part of his contract with the Respondent. The trial court steadfastly resisted this argument at trial, but the court was clearly wrong. California Civil Code § 1642 states,

> **Several contracts, when taken together.** Several contracts

> relating to the same matters, between the same parties, and made as parts of substantially one transaction, are to be taken together.

The point of Berg Metals Corp. v. Wilson (1959) 170 Cal.App.2d 559, 339 P.2d 869, 874, is that a contract of guaranty and the underlying documents are to be construed as one agreement, even if the parties are different, because they are part of the same transaction. By now, however, Respondent's attorneys had become involved and Job was suddenly informed that the promises of action made by the Respondent's Fresno branch were completely illusory, because of purported waiver clauses in the continuing, personal guaranty that Job had signed; Job was told that Respondent never had

any obligation to live up to its promises, because Job had waived any right to rely on them through language in the guaranty.

The magical (for Respondent) provision in the continuing guaranty turned out to be in Paragraph 4 of that document, which read,

> Guarantors [sic] authorize Bank, either before or after revocation hereof, without notice or demand and without affecting their liability hereunder, from time to time to (a) renew, extend, accelerate or otherwise change the time for payment of, or otherwise change the terms of the Indebtedness or any part thereof, including increase or decrease of the rate of interest thereon; . . . .

Specifically, it developed that Respondent would be relying on its contractual right to change the "terms of Indebtedness" without notice to Job, as insulating it from liability for, *inter alia*, ignoring the dual authorization and margin requirements of the Credit Agreement. The trial court had no problem with this and neither did the court of appeal; for them, as for Respondent, "terms of Indebtedness" certainly has to include the terms of the Credit Agreement, so Job could be precluded from defenses based upon Respondent's flaunting of the terms of the Credit Agreement.

The guaranty document itself was drafted by Respondent and is a form document, so any ambiguity should have been interpreted against it, as the party

that drafted the document. 14 Cal. Jur., "Contracts" § 157 (3rd. Ed. 1974). "Terms of the loan agreement" and "terms of the indebtedness" are hardly the same thing, however much Respondent wanted them to be and however easy it proved for the trial court and court of appeal to read them as synonymous. The guaranty defined the term indebtedness,

> The word "Indebtedness" is used herein in its most comprehensive sense and includes any and all advances, debts, obligations and liabilities of Borrowers, or any of them, heretofore, now or hereafter made, incurred or created, whether voluntary or involuntary and however arising, whether due or not due, absolute or contingent, liquidated or unliquidated, determined or

undetermined, and whether Borrowers may be liable individually or jointly, or whether such indebtedness may be or hereafter become unenforceable.

The definition is long-winded, but essentially equates to the common conception of the term, as set forth in Black's Law Dictionary (4th Ed., 1951), as "The state of being in debt, ..." and, of course, C.C. § 1644 mandates that words of a contract be understood in their ordinary and popular sense. The terms of the indebtedness thus govern the state of being in debt, but in no way affect how the debt was created, which is the function of the terms of the credit agreement. The guaranty itself gives ample indication of this common sense reading of the terms, as it specifies

renewal, extension, acceleration and the rate of interest charged on the existing debt as illustrations of what is meant by the "terms of the indebtedness." Under the principle of ejusdem generis, when general words follow a list of specific terms, the general terms will be strictly limited in meaning to the specific words. 14 Cal. Jur., supra at § 167.

Yet, Respondent was allowed to get away with claiming that "terms of indebtedness" had a broader meaning than that indicated by the specific examples, precisely what Respondent convinced the trial court and the court of appeal must be done. Continental Mfg. Corp. v. Underwriters at Lloyds London (1960) 185 Cal.App.2d 545, 8 Cal.Rptr. 276, 279, stands for the rule that exculpatory provisions in a contract will not be

interpreted as expressing the intention of the parties that one shall be released from a responsibility for the violation of a duty which he has expressly undertaken by the same contract. The very point of Berg and Civil Code § 1642, cited supra, however, is that the Job's continuing guaranty and the Credit Agreement are considered one instrument under the law. Legally, then, exculpatory clauses in the continuing guaranty cannot be interpreted to release the Respondent from performance of duties created in the Credit Agreement, yet this is precisely what the trial court and the court of appeal allowed.

In addition to this legal principle, there is the following, stated in Salton Bay Marina v. Imperial Irrigation Dist. (1985) 172 Cal.App.3d

914, 932, 218 Cal.Rptr. 839, 848,

> The language of an agreement in order to exclude liability for negligence must be "clear and explicit" and "free of ambiguity or obscurity." (*Conservatorship of Link* (1984) 158 Cal.App.3d 138, 143, 205 Cal.Rptr. 513.) The law generally looks with disfavor on attempts to avoid liability or to secure exemption for one's own negligence. (*Celli v. Sports Car Club of America, Inc.* (1972) 29 Cal.App.3d 511, 518, 105 Cal.Rptr. 904.) The law requires exculpatory clauses to be strictly construed against the party relying on them. (*Id.*, at p. 519, 105 Cal.Rptr. 904.)

It is with these principles in mind that assessment must be made of Respondent's

assertion that it cannot be held accountable for its failures to live up to the terms of the Credit Agreement, because of exculpatory clauses in the continuing guaranty.

Not to belabor this argument, but to state it most clearly, here is one phrase in the continuing guaranty, centering on a right to change the "terms of indebtedness", which Respondent successfully convinced the trial court and the court of appeal: 1) totally obliterates its contemporaneous, agreed-upon obligations with regard to procedures under the line of credit, such as the dual authorization; and 2) effectively eliminates Respondent's duties under Sumitomo Bank of California v. Iwasaki (1968) 70 Cal.2d 81, 447 P.2d 956, 73 Cal.Rptr. 564 to inform Job, as a

guarantor, that the risk of loss, which Job was undertaking by becoming a guarantor of the corporate debt, was totally different than what he was lead to believe it would be, because the Respondent's branch was not going to follow the agreed-upon safeguards for making advances on the line of credit and Respondent's counsel was going to argue that it did not have to follow the procedure.

These are quite draconian consequences for phrasing which never mentions the Credit Agreement or the procedures thereunder and gives every indication by what is written that the meaning of the phrase "terms of indebtedness" is much narrower and does not include the terms of the Credit Agreement, and it is a phrase which

appears in a form document drafted by the Respondent, much the stronger party in the deal. Yet when Job suggested to the trial court and the court of appeal that the language of the guaranty does not indicate such a broad application and effect, but rather communicates a much narrower focus, neither the trial court nor the court of appeal seemed to have given it any but the slightest consideration (the court of appeal calls the argument "confusing") and both dismissed the argument out of hand, allowing the drafter of the language, the Respondent, to dictate its meaning, scope and effect.

As noted above, both the trial court and the court of appeal of appeal found support for their actions in the Stevenson, *supra*, decision. There is no

doubt that Job's arguments herein run afoul of portions of the decision in Stevenson, but there and flaws in the Stevenson court's ruling, that indicate that the decision is simply bad law, violates the Fourteenth Amendment requirements of due process and ought not to be allowed to continue as precedent to dictate the type of unconstitutional result reached in the instant case.

In the Stevenson case, a bank's failure to follow required procedure was excused by waivers in Mr. Stevenson's continuing guaranty (and specifically language identical to language in Job's guaranty, i.e. the bank had the right to change the "terms of the indebtedness," as defined the same way Respondent did in the continuing guaranty here). The court of appeal in Stevenson upheld a trial

court ruling that Stevenson's assent in the guaranty to the bank's alteration of the terms of indebtedness without notice gave the bank the right to waive requirements for advancements on the loan, just as here, even though Stevenson clearly had notice of the failure to follow procedure, unlike Job. Id. at 318.

There is no evidence in the Stevenson opinion that the court even considered whether, or how, "terms of the indebtedness" could be given such a broad interpretation, where the drafters of the document had taken pains to indicate, by further language, that a narrow definition was intended by the parties and should be understood by the non-drafting signatory. The decision offers no discussion of whether the exculpatory

language was as clear and explicit as it would have had to be to be effective. If the court never considered the issue, it is hard to see how the holding was dispositive or allowed as precedent for anything, but it was followed here.

Under the legal principles cited above, Respondent should not have been able to relieve itself from an obligation created in the same contract, which the Credit Agreement and the continuing guaranty here are, under the law. Even if it were allowable for the Respondent to relieve itself from the effects of its failure to live up to its duties, Respondent would have had to do so in language that was "clear and explicit" and "free from ambiguity or obscurity," as the holding in Salton Bay Marina, supra, states. The Stevenson decision

notwithstanding, the exculpatory provisions in the Continuing Guaranty upon which Respondent relies to relieve it if the effects of its failure to adhere to the dual authorization requirement for advances on the J/W Cattle line of credit are far from clear and explicit. In fact, the very language that Respondent itself put into the continuing guaranty told Job that a narrow definition of "terms of Indebtedness" was intended, not the broad one behind which Respondent now seeks to hide. What is most clear is that there is absolutely nothing in these exculpatory clauses that did, could have or should have put Job on notice that Respondent was relieving itself of the obligation to comply the dual authorization requirement, etc. that were

being contemporaneously created, so there was nothing to put Job on notice that he was risking that, *inter alia*, his son-in-law would be able to singly authorize advances on the line of credit. Yet it was largely based upon such "waiver" language that the Respondent to avoid the consequences of its irresponsible failure to act as promised and set forth in the Credit Agreement, based upon such a clearly retrospective and obscure interpretation of the language in the guaranty, is simply unfair and ought not to be allowed.

If Respondent, or any financial institution, is going to make completely illusory its own contemporaneous promises and commitments, thereby procuring a blanket exoneration for its own failure to act as promised, and to so thoroughly

shift the risk of loss to the guarantor (which the Berg and Salton Bay Marina decisions indicate it cannot do, anyway), then the financial institution ought to be obligated to do so in clear and unmistakeable language. Yet the form guaranty here, drafted by the Respondent and stuck in front of Job for signing, contains no reference to the terms of the credit agreement (no doubt so Respondent could later conveniently argue that the documents are unrelated, if that suited its purposes), but instead indicates that the power of modification without notice extends only to the terms affecting the debt after it has been created, not the methodology of creation set forth in the Credit Agreement.

Job did not understand that, in signing the guaranty, he was

simultaneously allowing Respondent to evade liability for its <u>total</u> failure to live up to its end of the business bargain, and neither would most reasonable people, which was why it is was so crucial for such questions to be kept from a jury. Financial institutions such as Respondent are, after all, only in the business of profiting from the brokering of the use of money consigned to their care; they perform no selfless public service. As such, financial institutions cannot be allowed to sell a deal to a consumer such as Job, representing it as one thing, then later get away with exoneration for its manifest and egregious failure to live up to the terms of that deal, by way of an arcane and tortured interpretation of its own form documents. The trial court and

the court of appeal did not understand this argument (see, Appendix B at p. 69) and opted to rather cling to the deceptively safe shoals of the Stevenson precedent. In that the Stevenson decision rubber stamped the shoddy and deceitful business practices of the Respondent here, however, it is simply poorly reasoned, bad law and ought to be overruled in that it enables financial institutions to create a waiver of any meaningful defenses by a guarantor, without drafting the waiver so as to make it "knowing" in any rational sense of the word.

The California Supreme Court, in Isbell v. County of Sonoma 21 Cal.3d 61, 71, 145 Cal.Rptr. 368, 374, 577 P.2d 188, cert. denied 439 U.S. 996, 99 S.Ct. 597, 58 L.Ed.2d 669, held that entry of

judgment pursuant to the, then existing California statutes regulating entry of judgments on cognovit waivers was constitutionally defective. The Isbell court noted,

> But even if the terms of the confession are not dictated by the creditor, the drastic nature of the device - the debtor's advance waiver of all possible defenses and even the right to be notified of the existence of the proceeding - strongly suggests a substantial disparity in bargaining position and implies overreaching on the part of the creditor. Id. at 69-70.

In another case, Hulland v. State Bar (1972) 8 Cal.3d 440, 449, 105 Cal.Rptr. 152, 158, 503 P.2d 608, the California Supreme Court similarly

stated,

> A confession of judgment forecloses the presentation of any possible defense or controversy for judicial resolution; to the contrary it is a personal admission of a debt obligation upon which the court places its primatur. [Emphasis added.]

In Overmyer Co. v. Frick Co. (1972) 405 U.S. 174, 188, 92 S.Ct. 775, 31 L.Ed.2d 124, this Court cast serious doubt on the constitutionality, under the due process clause of the Fourteenth Amendment to the U.S. Constitution, of cognovit clauses in contracts of adhesion between parties of unequal bargaining power where a debtor receives nothing for the cognovit provision. The Overmyer decision specifically did not, however,

declare unconstitutional *cognovit* clauses, stating, rather, that due process rights could certainly be waived. What the Overmyer decision did indicate is that the waiver of due process rights in a civil case, as in criminal cases, should be "voluntary, knowing, and intelligently made" and should be an "intentional relinquishment." Id. at pp. 185-186.

> This Court has stated,
>
> For all its consequences, "due process" has never been, and perhaps can never be, precisely defined. "[U]nlike some legal rules," this Court has said, due process "is not a technical conception with a fixed content unrelated to time, place and circumstances." *Cafeteria Workers v, McElroy*, 367 U.S. 886, 895.

> Rather, the phrase expresses the requirement of "fundamental fairness," a requirement whose meaning can be as opaque as its importance is lofty.

Lassiter v. Dep't of Social Services (1980) 452 U.S. 18, 24-25, 68 L.Ed.2d 640, 101 S.Ct. 2153, rehearing denied 452 U.S. 927, 69 L.Ed.2d 1023, 102 S.Ct. 889.

> What the Constitution does require is "an *opportunity* . . . granted at meaningful time and in a meaningful manner," *Armstrong v, Manzo*, 380 U.S. 545, 552 (1965) (emphasis added), "for [a] hearing appropriate to the nature of the case," *Mullane v. Central Hanover Tr. Co., supra*, at 313.

Boddie v. Connecticut (1970) 402 U.S. 371, 378, 28 L.Ed.2d 113, 91 S.Ct. 780,

conformed to 329 F.Supp. 844.

As noted above, the court of appeal found "confusing" Job's argument about the waiver clause and the unjustifiably broad scope the Respondent (as well as the trial court and court of appeal) allowed for "terms of Indebtedness;" so it was not that the arguments were not made, merely that the court of appeal would not understand them or give them credence. The unconscionability lies in Respondent's ability, with the aid of the courts, to, *ex post facto*, impose upon Job such a one-sided and unfair bargain, which totally absolved the Respondent of responsibility for its branch's failure to act as promised, all by means of a tortured reading of its own form document. Since Respondent's interpretation of the contract provisions

as waivers of all Job's defenses are upheld by the trial court and court of appeal, those provisions as waivers must be as constitutionally defective as the cognovit clause attacked in the authorities cited above.

The court in Payne v Superior Court (1976) 17 Cal.3d 908, 911, 132 Cal.Rptr. 405, 553 P.2d 565, states,

> Few liberties in America have been more zealously guarded than the right to protect one's property in a court of law. This nation has long realized that none of our freedoms would be secure if any person could be deprived of his possessions without an opportunity to defend them "at a meaningful time and in a meaningful manner." (*Fuentes v. Shevin,* (1972) 407 U.S. 67, 80, 92

S.Ct. 1983, 1994, 32 L.Ed.2d 556.)

There was obviously no cognovit, confession to judgment, involved here, as that term is usually understood; there was undeniably a judicial proceeding involved in reaching the judgment and Job clearly had notice of it, but both Respondent and the trial court and court of appeal so interpreted the relevant contract (the continuing guaranty) so as to have effectively eliminated any defenses Job might have had to the judgment. This interpretation turned the relevant contract provisions into a confession to judgment in effect, if not in fact.

Job was completely deprived of his right to present a "meaningful defense" (and in reality "any defense") just as surely as if he had signed a confession

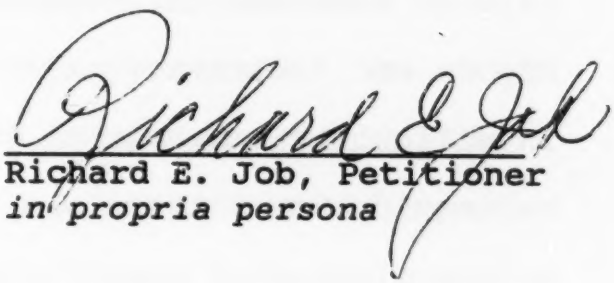
to a judgment and, moreover, this result could be achieved only with the help of the courts, based upon the precedent of Stevenson, *supra*, thus involving state action in the process of depriving Job of his due process rights even more than under the "confession to judgment" clauses previously overturned. The court of appeal missed the point that it was the deprivation of Job's constitutional rights which should have been the focus of the court's analysis of the clauses and related facts, instead of the narrower focus on whether the clauses at issue here were the same as ones previously found invalid.

The clauses at issue here are thus just as constitutionally infirm as if they were mirror images of those struck down as *cognovit* clauses. In fact, the

clauses here are the more reprehensible, as they give less notice of their dire consequences than would an outright confession to judgment. The waiver clauses her deprived Job of his due process right to offer a meaningful defense and, not only was this waiver of rights not "voluntary, knowing, and intelligently made" or an "intentional relinquishment," there was nothing in the waiver clauses at issue here, which even gave notice of the breadth of waiver that was being made. As such, the clause, in the way they were interpreted by the Respondent and the courts, are unconstitutional.

CONCLUSION

WHEREFORE, Petitioner Richard E. Job prays that a writ of certiorari be issued to review the denial by the California Supreme Court of Petitioner's Petition for Review of the court of appel decision in the case.



Richard E. Job, Petitioner
in propria persona